



FEDERAL COMMUNICATIONS COMMISSION
Wireless Telecommunications Bureau
Competition and Infrastructure Policy Division
445 12th Street, SW
Washington, DC 20554

June 16, 2016

VIA FIRST CLASS MAIL AND EMAIL

Kenneth R. Meyers
President and Chief Executive Officer
United States Cellular Corporation/ Maine RSA No. 1
8410 West Bryn Mawr Avenue, Suite 700
Chicago, IL 60631-3486

Re: VIOLATION OF FCC ENVIRONMENTAL RULES

Dear Mr. Meyers:

This letter pertains to our findings that United States Cellular Corporation (USCC) failed to comply with the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) and other federal environmental statutes¹ and related licensing rules.² The Wireless Telecommunications Bureau has determined that USCC violated Sections 1.1307, 1.1312, and 24.2 of the Commission's rules³ by constructing a tower in Farmington, Maine, without first completing the required historic preservation review. By this letter, we apprise USCC of the implications of failing to comply with Commission regulations in the future.

Regulatory Requirements

Under the Commission's rules, an applicant must consider, prior to initiating construction or deployment, whether the facility it proposes to build or use may have a

¹ See 47 C.F.R. §§ 1.1301 *et seq.*; *see also* 42 U.S.C. §§ 4321-4335. NEPA requires that federal agencies consider the environmental effects of their major federal actions before taking action, including issuing permits, licenses, or approvals. *See also* the National Historic Preservation Act, 54 U.S.C. § 300101 *et seq.*

² See 47 C.F.R. § 24.2(b).

³ See 47 C.F.R. §§ 1.1307, 1.1312, 24.2.

significant effect on the environment.⁴ As part of this review, Section 1.1307(a)(4) of the rules requires applicants to consider, prior to initiating construction or deployment, whether their proposed facilities would affect properties listed or eligible for listing in the National Register of Historic Places.⁵ In considering effects on these properties, Section 1.1307(a)(4) requires applicants to follow the prescribed procedures set forth in the rules of the Advisory Council on Historic Preservation (Advisory Council),⁶ as modified by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement)⁷ and the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (NPA).⁸ These agreements tailor and streamline the review and consultation procedures routinely required by the National Historic Preservation Act of 1966 (NHPA)⁹ and the implementing regulations issued by the Advisory Council.

USCC's Conduct

⁴ 47 C.F.R. § 1.1312(a); *see also* 47 C.F.R. § 24.2(b) (requiring licensees in the Personal Communications Services to comply with the environmental requirements in Part 1 prior to construction). If the facility may have a significant environmental impact, the applicant must prepare an EA in accordance with the Commission's rules. *See* 47 C.F.R. §§ 1.1307, 1.1311(a).

⁵ 47 C.F.R. § 1.1307(a)(4).

⁶ 36 C.F.R. Part 800.

⁷ 47 C.F.R. Pt. 1, App. B; *see Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (WTB 2001), *recon. denied*, 20 FCC Rcd 4084 (WTB 2005).

⁸ 47 C.F.R. Pt. 1, App. C; *see Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004), *clarified*, 20 FCC Rcd 17995 (2005), *aff'd*, *CTIA-The Wireless Ass'n. v. FCC*, 466 F.3d 105 (D.C. Cir. 2006) (*NPA Report and Order*). Under the NHPA and the Advisory Council's implementing regulations, the Advisory Council may approve program alternatives that tailor a federal agency's historic preservation review and consultation procedures to the particular circumstances of the agency's program or that exempt from historic preservation review actions that are unlikely to affect historic properties. *See* 54 U.S.C. § 304108 *et seq.*; 36 C.F.R. § 800.14(b), (c).

⁹ 54 U.S.C. § 300101 *et seq.* The NHPA requires that a federal agency consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits or approvals. *See* 54 U.S.C. §§ 306108, 300320. This review is commonly referred to as "Section 106 Review" because the provision requiring the review was originally enacted as Section 106 of the NHPA. In considering such effects, the NHPA further requires the federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council, which is the federal agency responsible for implementing the NHPA; the appropriate State Historic Preservation Officer; and, if historic properties of religious or cultural significance to federally recognized Tribal Nations or Native Hawaiian Organizations may be affected, their representatives. *See* 54 U.S.C. §§ 302104, 302706, 306108, 304101. As authorized by the Advisory Council, the Commission's environmental rules delegate to its licensees, permittees, and applicants initial responsibility for identifying historic properties and evaluating the effects that their proposed facilities may have on such properties, but the Commission remains ultimately responsible for ensuring that the Section 106 process occurs in accordance with applicable statutory and regulatory provisions, as well as for government-to-government consultation with federally recognized Tribal Nations. *See* 47 C.F.R. § 1.1307(a)(4); *see also* 36 C.F.R. § 800.2(a)(3); *NPA Report and Order*, 20 FCC Rcd at 1076-77 ¶ 5.

USCC has failed to comply with the Commission's environmental and licensing regulations.¹⁰ In 2008, it constructed a tower at 376 Titcomb Hill Road in Farmington, Maine, without completing the required historic preservation review process.¹¹ In particular, it constructed the tower before the Maine State Historic Preservation Officer had reviewed for adverse effects on historic properties at the site.¹² In addition, because USCC constructed the tower to provide service under a PCS license, its construction before completing the required historic preservation review constituted a violation of the licensing rules.¹³

Based on the information we have received, we find that USCC violated the Commission's regulations implementing NEPA and other environmental statutes, including the NHPA, as well as related licensing requirements. Future violations may result in additional action, including the imposition of monetary penalties, pursuant to the Wireless Telecommunications Bureau's authority under 47 C.F.R. § 0.111(a)(11) or via referral to the Commission's Enforcement Bureau. Furthermore, USCC's conduct at issue in this letter may provide grounds for an upward adjustment in the amount of a penalty.

Please direct any questions regarding this letter to Erica Rosenberg (erica.rosenberg@fcc.gov, (202) 418-1343).

Sincerely,

Jeffrey S. Steinberg
Deputy Chief
Competition and Infrastructure
Policy Division
Wireless Telecommunications Bureau

cc: Peter Connolly, Counsel, United States Cellular Corporation
Holland and Knight
800 17th St., NW Suite 1100

¹⁰ See 47 C.F.R. §§ 1.1301 *et seq.*, 24.2.

¹¹ See 47 C.F.R §§1.1307(a)(4), 1.1312(a); 47 C.F.R. Pt. 1, App. C.

¹² While the SHPO had previously found no adverse effects at another site a mile away, this finding is inapplicable to the location at which USCC actually constructed. We note that subsequent to construction, the SHPO found that the tower USCC constructed had no adverse effects on historic properties, even though an adjacent property is eligible for listing on the National Register. See letter dated March 27, 2009, from Kirk Mohney, Deputy State Historic Preservation Officer, Maine State Historic Preservation Office, to Suzanne B. Derrick, EBI Consulting.

¹³ See 47 C.F.R. § 24.2(b). While we have no evidence that USCC commenced operations before the review was completed, the rules require review prior to construction.

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